IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3834 of 1998

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3834 of 1998

MR PARESH UPADHYAY for Petitioner No. 1

Mr. N.D.Gohil, AGP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 14/09/2004

ORAL JUDGEMENT

1. In this petition, the petitioner has challenged the order dated 29th January, 1997 by which the Disciplinary Authority has imposed penalty of reducing the pay of the petitioner by two stages in the timescale of pay for a period of two years with future effect.

2. The petitioner was served with the chargesheet dated 18th March, 1981 which chargesheet consisted of four charges against the petitioner. Pursuant to the Departmental Inquiry conducted against the petitioner, the Inquiry Officer submitted his report dated 17th July, 1995 in which the Inquiry Officer concluded that the charge article 1 against the petitioner is not proved, whereas the remaining three charges were held to have been proved against the petitioner.

3. The Disciplinary Authority supplied the copy of the Inquiry Officers report to the petitioner. The petitioner made his representation on 28th October, 1995. The Disciplinary Authority agreed that the findings of the Inquiry Officer that the chargesheet article 1 is not proved and held that the remaining charges are proved and accordingly imposed the above penalty of reduction of the pay of the petitioner by two stages for a period of two years with future effect.

4. Number of contentions have been raised by the petitioner in the present petition against the said order of penalty. However, this petition is being considered and disposed of on the sole ground of the order of the Disciplinary not being a reasoned order inasmuch as the detailed representation of the petitioner against the Inquiry Officer's report has not been considered by the Disciplinary Authority at all. In the order of penalty, the Disciplinary Authority has stated that for not accepting the contentions made in his representation, separate reasons are indicated in the Exhibit along with the order. When one peruses the Exhibit along with the order of penalty, the Disciplinary Authority has noted the contentions of the petitioner and has rejected all contentions in one line by stating that the above representation of the petitioner is only with a view to escaping from the legalities, and that the petitioner is well versed with the activity of illegal excavation and the petitioner has only tried to blame his superior officers. On this short ground several contentions of the petitioner against the Inquiry Officer's report came to be rejected by the Disciplinary Authority.

5. In the decision of SHER BAHADUR v. UNION OF INDIA AND OTHERS reported in AIR 2002 SC 3030, the Honourable Supreme Court was pleased to observe that mere statement by the Inquiry Officer in his report that " in view of oral, documentary and circumstantial evidence as adduced in inquiry" does not in principle satisfy the rule of sufficiency of evidence.

6. In the present case also, I find that the Disciplinary Authority has not considered number of contentions raised by the petitioner against the Inquiry Officer's report and has rejected the contentions by merely observing that the petitioner is trying to escape from the legalities and is trying to blame his superior officers. This cannot be termed as a sufficient consideration of the petitioner's representation in which number of contentions have been raised by the petitioner to convince the Disciplinary Authority not to accept the Inquiry Officer's report. On this short ground, I am inclined to accept the petition and allow in part. The Disciplinary Authority's order though is required to be set aside, the matter cannot be allowed to rest at this stage, since order is being set aside on technical ground, the matter shall have to be remanded to the Disciplinary Authority to consider the representation of the petitioner afresh and pass fresh orders in accordance with law after properly taking into consideration all the contentions raised by the petitioner.

7. In the result, the impugned order dated 29th January,1997 is set aside, and the matter is remanded back to the Disciplinary Authority for fresh consideration in light of the observations given hereinabove. Considering that the petitioner has retired with effect from 31st December, 2000, the Disciplinary Authority will pass fresh orders within a period of two months from the date of receipt of copy of this order. In case the order that may be passed by the Disciplinary Authority is adverse to the petitioner, it will be open for the petitioner to challenge the same in accordance with law and all contentions will be open for the petitioner to be take up in such proceedings.

8. With these directions, the petition is disposed of. Rule is made absolute. No orders as to costs.

(Akil Kureshi,J.)

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